IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1074 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

and

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

RAMESHKUMAR LABHSHANKAR JOSHI

Appearance:

MRS TALATI, APP for Appellant

MR JM BUDHBHATTI for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

and

MR.JUSTICE J.R.VORA

Date of decision: 14/03/2000

ORAL JUDGEMENT : [Per: Vora, J.]

1. In bribery cases, back bone of prosecution case is demand and acceptance of bribery. The prosecution has, beyond doubt, to establish these two vital aspects of the story narrated by the prosecution. If one of them is not established, the conviction cannot be based on mere establishment of the acceptance of bribery or on mere demand of bribery. This is the celebrated principle of law.

2. Rakeshkumar Labhshankar Joshi - respondent herein was prosecuted under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947. The facts leading to the prosecution briefly be stated as under :

The complainant Mr. Dhansukhrai Vithalas Ghadiya was a resident of Bhavnagar. He was allotted a house by Gujarat Housing Board on 4th Floor, Block No.4, Flat No. 3490. According to the case of the complainant, he had children of tender age and mother of about 80 years old. Therefore, he settled with one Yusufbhai, who was allotted a house by the Gujarat Housing Board on the ground floor in the same building, for mutual transfer of houses allotted to each of them. Both of them decided to interchange the house so as to accommodate the complainant in the ground floor. According to the case of the complainant, for this, both of them i.e. the complainant and Yusufbhai went to the Office of the Gujarat Housing Board on 30th July, 1988, at Bhavnagar wherein the present accused was working as In-charge, Estate Manager. On 30th July, 1988, when complainant met the accused and informed him that he wanted to change his house with one Mr. Yusufbhai on the ground floor, the accused demanded Rs. 2,000/- as bribery. Yusufbhai refused to share the amount and, therefore, the respondent agreed to pay Rs. 2,000/- to the accused. According to the case of the complainant, out of this amount of Rs. 2,000/-, Rs. 1,000/- was paid to the Estate Manager i.e. the accused herein, on the same day, which the accused collected from his shop at Bhavnagar at about 7'O clock in the evening. It was agreed that the remaining amount of Rs.1,000/- would be paid to the accused after the orders for the interchange of the house were passed and the accused agreed to this. As per the case of the complainant, thereafter, the complainant frequently gone to see the accused and accused was demanding the remaining amount of Rs. 1,000/-. In the meantime, the applications filed by the complainant and Yusufbhai came to be rejected. The complainant again

after the rejection of applications, met the accused, who inturn said to the complainant that he should be paid the remaining amount of Rs. 1,000/-, so the houses could be transferred. The complainant requested the accused that he was in financial trouble but the accused insisted that the remaining amount of Rs. 1,000/- were required to be paid to him and without that, the transfer of the houses between him and Yusufbhai was not possible. Thereafter, a new application was filed by the complainant and Yusufbhai around 6th of January, 1989. As prosecution story proceeds ahead, the material date is 2nd February, 1989, and it is the case of the complainant that on that day for the transfer of the houses he visited the office of the Board to meet the accused at about 2.15 to 2.30 p.m. He came to know that the accused was at his residence because it was the recess hours. The complainant found out that the residence of the accused was nearby, which was at Vithalwadi in House No.M 130, Block No.10 at Second Floor. The complainant visited on that day the residence of the accused where he found the accused at his residence. As per the case of the complainant, again he negotiated with the accused regarding his application for the transfer of his house with Yusufbhai. The accused replied that on Friday i.e. 3rd February, 1989, he was to go out and that on Saturday i.e. on 4th February, 1989, he would visit the shop of the complainant and recover Rs.1,000/- the remaining amount of bribery. The accused further assured the complainant that while he would visit the shop of the complainant, he would also hand over the papers of transfer to him at the shop of the complainant. The complainant thereafter left the residence of the accused.

3. Since the complainant did not intend to give this bribery amount, on 3rd February, 1989, he contacted Anti Corruption Officer of the Bhavnagar and he narrated his complaint before the ACB - PSI, which was recorded. At that time, PSI Mr. Goswami was present. He inturn obtained permission from the Magistrate to investigate the offences. He directed the complainant to remain present at 6'O clock in the morning on 4th February, 1989. Accordingly, complainant went to the ACB Office at 6'O clock in the morning on 4th February, 1989, where PSI Goswami called two panchas - Himant Jayaram Jagani and Vinodhrai Lakhabhai Basaiya. Panch Himant Jayaram Jagani was called from Land Record Office, Bhavnagar, and in the presence of these panchas, necessary procedure was carried out by PSI Goswami. Complainant was asked to produce the amount of Rs. 1,000/-, which was to be given to the accused as bribery, experiments of ultraviolet lamp and anthracene powder were performed as mentioned in

the panchnama. The currency notes with anthracene powder was placed in the shirt pocket of the complainant. Prior to that both the panchas were introduced to the complainant and complainant informed the facts of the complaint to the panchas. The first part of panchnama for what was done upto this was drawn. At about 11'O clock, both the panchas, complainant, PSI Goswami and other officials of ACB, Bhavnagar, went to the house of the complainant where his shop is situated adjoining to his residence. This area is Vadva Nehra area of Bhavnagar. Thereafter, the complainant waited in his shop, panch No.2 was placed in the lobby of the shop and panch No.1 and other persons of raiding parties took their respective places at the residence of the complainant. At about 11.30 a person came on cycle at the shop of the complainant and he conveyed that the accused was not able to visit the shop of the complainant because he was out of town and he would be returning in the evening. Thereafter, according to the case of the prosecution, all of them went back again to the office of ACB Office and waited there till 8'O clock in the evening and at about 8.15 both the panchas, complainant, PSI Goswami and other persons of ACB Staff went to the residence of the accused. It was enquired from the residence of the accused but the accused had not returned from his tour, therefore, all of them waited in the nearby area of the residence of the accused. After 15 to 20 minutes, accused came in a Jeep and straightaway went to his residence. Complainant and panch No.1 were waiting for the accused in front of his residence. It was about 8.30 in the evening as per the case of the prosecution. Complainant and panch No.1 went in the residence of the accused. Thereafter, according to the case of the prosecution, complainant started conversation with the accused and he inquired about the transfer of his house. The accused inquired that who was the person accompanying with the complainant. The complainant explained regarding panch No.1 that he also wanted to transfer his house and prepared to pay him amount which the accused demands. Thereafter, the accused asked the complainant whether he had brought the balance amount of Rs. 1,000/-. The complainant took out the amount from his pocket and gave to the accused. The accused mentioned that the papers of the transfer of the house were ready and the papers would be handed over to the complainant on the next day. The accused accepted the amount. He counted the currency notes and put the notes near the television where a cloth was placed. Thereafter, the complainant came out of the residence of the accused. He gave the required signal to ACB Staff. On his signal, PSI Goswami, panch No.2 and other ACB

Staff raided the residence of the accused. Currency notes were recovered near the television lying on the cloth. Necessary experiments of ultraviolet lamp were carried out and anthracene powder was found on the hands of the accused and the complainant and on muddamal currency notes. The second part of the panchnama was then prepared. After investigation of this case, a charge sheet for the above said offences was submitted to the court of learned Spl. Judge, Bhavnagar, which was registered as Special Case No. 10 of 1990. Since the accused pleaded not guilty, trial was proceeded and after hearing both the parties, learned Special Judge, Bhavnagar, vide his judgment dated 10th September, 1996, came to the conclusion that the charges were not proved and the accused was entitled to acquittal.

4. Being aggrieved, this Appeal is filed by the State against the original accused respondent No.1 herein. Learned APP Mrs. Talati for the State and learned Advocate Mr. J.M. Budhbhatti for the respondent were heard.

5. Learned APP Mrs. Talati has vehemently assailed the judgment of the Spl. Judge, Bhavnagar, acquitting the accused for the serious charges. Mrs. Talati urged that though there are some contradictions in the evidences of the prosecution but the fact remains that the amount of Rs. 1,000/- was recovered from the residence of the accused, which had anthracene powder marks. There were anthracene powder marks on the fingers of the accused also. The story of the complainant is probable and that the panch has fully supported the case of the prosecution. Therefore, the learned Special Judge has erred in appreciating the evidence in its proper perspective and acquitted the accused. Learned APP Mrs. Talati has further urged that on the overall assessment and appreciation of the evidence, the prosecution is able to prove the charges against the accused.

6. On the other hand, learned Advocate Mr. J.M.Budhbhatti took us to the entire evidence and the record of the case. He pointed out that there are major contradictions in the prosecution evidence so as to render the story of giving bribery or demand of bribery improbable.

7. Scrutinising the record, appreciating the evidence and taking into consideration the rival contentions from both the sides, it appears that the prosecution has come with one story which starts from 30th July, 1988 and ends on 4th February 1989. True, it

is, that the story is so integrated one that if any part of the story is proved to be improbable, then the whole prosecution case would be unbelievable. Though the story is an integrated one but for the sake of convenience and in the manner the evidence is adduced the story can be divided into three parts. The first part, which is related to 30th July, 1989, the second part starts from the rejection of the applications of the complainant and Yusufbhai includes material dates i.e. 6th January 1989 till 2nd of February, 1989. The third part is 4th February, 1989 on the day when the trap was arranged and the bribery amount was recovered from the accused.

8. It is needless to reiterate that the very primary link of the chain, which the prosecution has to establish is the demand of bribery. First, we shall examine that whether prosecution story, as has been revealed in the evidence, has established the demand of bribery by the accused beyond reasonable doubt. This includes the appreciation of two parts, first and second as above.

9. As per the case of the prosecution story, the demand was made on 30th July, 1989 and thereafter, on 6th January, 1989 and thereafter on 2nd February, 1989. Therefore, the root of the prosecution story rested on 30th July, 1989 so far as the demand of the bribery is concerned. It is the specific case of the complainant that on 30th July 1988, he personally went to see the accused in his office, where the accused demanded Rs. 2,000/- for the transfer of the houses. As per the case of the complainant, he paid Rs. 1,000/- on 30th July 1988 and agreed to pay Rs. 1,000/- remaining amount after the houses are transferred. On careful scrutiny of evidence, a conclusion is required to be drawn as to whether the say of the complainant is probable and more care is required, because this conversation has taken place between the accused and the complainant alone. Where no third party was present. If the complainant inspires confidence the story may be probable, may be believed. But on scrutiny of the evidence, it is found that the complainant is not inspiring the confidence, then the story of the prosecution which starts on 30th July, 1988 which pertains to vital aspect of the first demand of bribery would be rendered improbable. On scrutiny of the evidence, there are two major hurdles in the case of the prosecution, which renders the say of the complainant improbable. The first of which is the matter of record. On scrutiny of the application, which is on record at Exhts. 9 and 10, it is clearly revealed that the applications were submitted to the office of the Housing Board on 28th July, 1988 and not on 30th July,

1988. Further, it is also revealed from the documentary evidence that these applications were not handed over as per the say of the complainant to the accused but were handed over to one Mr.G.P. Chudasma, may be an employee of the Housing Board. The said Chudasma has made an endorsement on the application that he has received the application on 28th July, 1988. Further, there are the major contradictions, which renders the story of the prosecution and the say of the complainant improbable, regarding the payment of the bribery on 30th July, 1988. In the complaint it is categorically mentioned by the complainant that on 30th July, 1988, the accused in the evening at about 7 'O clock visited his shop and recovered Rs. 1,000/-, but in his evidence, at Exh. 6, he categorically deposed that he paid this amount of Rs. 1,000/- to the accused in person in the office itself when he personally visited the accused on that day and when the accused demanded the bribe amount. When this fact was brought to the notice of complainant in the evidence, he was not clear in his explanation and was found evasive. These are the two major contradictions which goes to the root of the prosecution story and renders the say of the complainant improbable as to whether on 30th July, 1988 the accused in fact made a demand of bribery.

10. In this connection, an important fact which is required to be appreciated is whether the accused was competent to order the transfer of the houses as requested by the complainant and Yusufbhai. The complainant is a businessman having a shop at Bhavnagar and doing his business. He is not a layman that he would not know that the accused was not competent to pass orders for the transfer of the houses. In para-6, in his deposition the complainant admits that he was informed by the Board that the houses as requested by the complainant and Yusufbhai cannot be transferred, according to the rules of the Housing Board. This creates a doubt about the demand of bribery on 30th July, 1988 by the accused and payment made by the complainant. Not only that this affects the story narrated by the prosecution. While it was not possible according to the rules of the Housing Board to transfer such houses, the question of submitting the second application and asking by the accused for the amount of Rs. 1,000/- which remains to be paid to the accused would not arise. Therefore, this fact while appreciating with the say of the complainant, is so vital that it renders the story of the prosecution regarding the payment on 30th July, 1988 as well as subsequent demands of bribery improbable.

11. So far as the second part of the prosecution case is concerned, it is the say of the complainant that before 6th January, 1989, he frequently visited the accused and the accused frequently demanded the remaining bribery amount of Rs.1,000/-. There are major contradictions regarding this fact whether after the rejection of the first application till 6th February, 1989, the complainant visited the accused. In his complaint, he has not stated that he frequently visited the accused and accused frequently demanded the remaining amount of bribery. It is the case of the prosecution in the complaint that on 2nd February, 1989, which was Thursday at about 2.15 p.m. the complainant visited the office of the Housing Board and came to know that the accused was at his residence. Complainant went to the residence of the accused where according to the case of the complainant, again he demanded Rs. 1,000/- the remaining amount of bribery and the accused further stated that on 4th February, 1989 he would visit the shop of the complainant and recover the amount and would hand over the papers of the transfer of houses to the complainant. Regarding this also, the complainant has given more than one version in his deposition. At one place, in para 28 of the deposition, he says that the conversation between him and the accused took place on 6th January, 1989, on that day, he submitted fresh application (Exh.13) in the Office of the Housing Board, where the accused demanded the remaining amount of Rs. 1,000/-. In that para, again he changes his version and deposes that not on 6th January, 1989 but on 2nd February, 1989, he visited the accused. Therefore, what referred during and after rejection of the first application and till 2nd February, 1989 has not been clearly stated by the complainant. So far as 2nd February, 1989 is concerned, when some questions were put to the complainant regarding the conversation between him and the accused, the complainant was evasive, in his reply, to the extent that in his deposition, learned Spl. Judge had to note the demeanour of the witness that he was evasive in reply.

12. Appreciating all these circumstances and the contradictions on the record, it appears that it was not the case of the prosecution that the second payment was made on 6th January, 1989 but the complainant refers the demand of bribery on 6th January, 1989. This fact again he has not mentioned in the complaint or in his statement, which is brought to his notice and either admitted by the witness or proved by the Investigating Officer.

13. One more vital circumstance on record is found from the evidence of prosecution witness No.2 Exh. 16 Maruti Sayaram Jadav, which invariably indicates that the story of the prosecution and the say of the complainant that the accused demanded the amount of bribery on 2nd February, 1989 is not probable. This witness is an employee of the Board and is a rent collector. He has been examined by the prosecution and he has submitted certified copies of the log book of the official vehicles kept by the Board. In his cross-examination in para-4, the witness has admitted that on 2nd of February, 1989 from 11.30 to 12.30 the accused visited ACB Office for his some other work. There is an entry in the log book (Exh.17) regarding this. This witness has further deposed that on 2nd February, 1989, at about 2'O clock accused and other officers including this witness in official vehicle of the Board had gone to Palitana and returned to Bhavnagar at 9'O clock in the evening. Exh.17 which is a log book and the evidence of this witness establishes that on 2nd February, 1989, the accused left Bhavnagar at 2.00 p.m. in the noon and returned at 9.00 in the evening after visiting Palitana for the official work. Appreciating this circumstances, with the evidence of the complainant that at about 2.15 to 2.30 he visited the house of the accused where he demanded the amount of bribery it becomes doubtful whether complainant at all approached accused. Such a witness does not inspire confidence and only conclusion would be the prosecution is not able to prove the case of the demand of bribery against the accused. Neither the case of the demand of bribery on 30th July, 1988 could be established nor the case of the demand of bribery on 2nd February,1989 could be established by the prosecution, which renders the prosecution case improbable.

14. So far as the recovery of the amount on 4th February, 1989 is concerned, the major loopholes which the prosecution case contains is regarding the period from 11.30 in the morning to 8'O clock in the evening. It is the prosecution case that the raiding party waited for the accused to approach the complainant at his shop on 4th February till 11.30 when an unknown person conveyed to the complainant that the accused was out of Bhavnagar and could be approached in the evening only. The attention of the complainant drawn to the statement wherein he has stated that the person who conveyed this message was Mansukhlal Mohanlal Parekh while in his deposition he says that some unknown person conveyed him the above message. This is vital and important because during investigation it was revealed that Mansukhlal Mohanlal Parekh conveyed the message to the complainant.

In the circumstances, it was the duty of the prosecution that this important witness ought to have been examined to establish the proximity between the accused and the complainant regarding the story of bribery. Had Mansukhlal Mohanlal Parekh been examined by the prosecution, the story of the prosecution would have been more probable and reliance could have been placed on that. It is not clear that why the complainant in his deposition concealed the name of Mansukhlal Mohanlal Parekh while he has stated so before the police. This leads to an inference that the only reason for the complainant to conceal this name in the deposition was that either nothing of this sort as alleged by him had taken place on 2nd February or it was apprehended that the fact would be revealed that the accused never conveyed such message to the complainant. The story alleged to have taken place on 4th February, 1989 weakens by this circumstances. There are contradictions also regarding the recovery of the currency notes when the raid was actually arranged. The complainant says it was the accused, who handed over notes to the PSI Goswami. Panch says that he handed over the notes to Goswami. There is a contradictions between the narration of the conversation between the accused and complainant took place on 4th February immediately before the trap was arranged. Therefore, it is the duty of the prosecution to explain before a court appreciating the evidence that what might have taken place between the accused and the compliant while accepting the amount of bribery. Therefore, the acceptance of amount of bribery also is shrouded by clouds of doubts and it could not be said that not only the demand of bribery but the prosecution could not also establish the acceptance of the bribery. The vital aspect is the period between 11.30 to 20.00 hours in the evening of 4th February, 1989 as aforesaid. It is the case of the prosecution and as revealed in the deposition of Investigation Officer that when all of them knew that the accused went out of town and was not able to visit the shop of the complainant, all of them went to the ACB Office and complaint as well as both the panchas sat at the ACB Office till 8.00 in the evening. Now, as per the evidence of the complainant and panch No.1 they categorically stated that the amount i.e. currency notes which were placed in the pocket of the complainant was allowed to remain there. It was further deposed by both the witnesses that PSI Goswami and his staff went to ACB Office while complainant remained at his shop and panch No.1 also went to his home. Both of them visited the ACB Office in the evening only at 8.00 p.m. This is the major contradictions renders the prosecution story unbelievable. The currency notes which were placed in

the pocket of the complainant were with the marks of Anthracene powder. In ordinary course, what is expected from the ACB officials to keep constant surveillance on the complainant, panch No.1 and the currency notes containing anthracene powder marks. It is likely that the currency notes may be taken out of the pocket of the complainant and may change hands and in those circumstances it would be difficult for the ACB Officials to lay a successful trap because in those circumstances even if the anthracene powder is found in the persons like accused and panch No.1, the same would not be a cogent evidence. However, for the reasons not explained, complainant and panch No.1 on oath deposed something, which is in contradiction to prosecution story. It is fatal to the prosecution case. All the required care was not taken by the ACB Officials to ensure that the currency notes with the anthracene powder marks remains in the pocket of the complainant till the demand is made by the accused. In both ways, this is fatal to the prosecution case and, therefore, also the story regarding the acceptance of the bribe by the accused cannot be upheld.

15. As discussed above, prosecution neither could establish the case beyond doubt regarding the payment of bribery nor the acceptance of the bribery and the evidence which is adduced is not inspiring the confidence while appreciating carefully. It is noteworthy that whether this complainant can be believed, other wise also because in his evidence in para 31, internal page 20, he deposed that he believed that the work which is sought to be done through the Housing Board Office was such type of work which could not be done by giving bribe. He admits that his purpose would have been served only if he filed a compliant before the Anti Corruption Bureau. He also deposes that he believed that on filing of the complaint, the officers of the Anti Corruption Bureau would direct the accused to do necessary in the case of the complainant and, therefore, he filed the complaint. This statement of the witness destroys the whole case of the prosecution. A doubt is created that whether the complainant at all approached the accused and whether the accused demanded bribe and whether accepted the same. The standard of the proof in the bribery case must be strictest to come to a definite conclusion that there could not be any other inference from the evidence except the accused demanded and accepted the bribery. This is so because in bribery cases scheming complainants, like one in the present case, may be prompted or tempted to harass innocent employees for their own private purposes and in view of the matter while appreciating the

evidence, we come to the conclusion that the acquittal of the accused for the charges is required to be maintained. While we generally agree with the reasoning of the Special Judge for acquittal, we need not deal with each of the details of the case.

16. In this view of the matter, this Appeal fails and the same stands dismissed. Bail bond shall stand cancelled.

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